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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Adelmo Monsalve-Gonzalez

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EXAMINER

TRAN LIEN, THUY

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/005,052	Applicant(s) MONSALVE-GONZALEZ ET AL.	
	Examiner Lien T. Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-3, 5-9, 16-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley (4844924) in view of Phillips et al

Stanley discloses a method of preparing a bran product. The method comprises the steps of reacting the bran with lower aliphatic carboxylic acid, acid halide, ester or anhydride and bleaching the reacted bran with one or more bleaching agents. The agents used are peroxides, chlorites, peracids and ozone. Following bleaching, the bleached bran is isolated from the bleaching medium by filtration, centrifugation etc, washed and dried to form a free-flowing particulate. (see columns 1,3-4 and example 5). The pH is adjusted to an acidic level after the esterifying step and before the bleaching step. Example 5 discloses adjusting the pH to 5 before bleaching. This meets the limitation of acidifying the bran to a pH of about 4-6 prior to treating with ozone.

The teaching of Stanley is described above. Stanley does not disclose the bran is wheat bran or red wheat bran, the size of the bran is about 100 microns, the acid as in claims 16-17, the moisture content of the bran, the amount of ozone, admixing the bran with flour, forming a dry mix, forming cereal pieces, adding the bran to a grain product and forming the grain product into finished baked good.

Phillips et al disclose a process of bleaching lignocellulosic pulp using ozone. They teach the amount of ozone used in the bleaching is .2-1% ozone (see col. 5 lines 34-38)

Stanley teaches bleaching bran with ozone; during bleaching, the bran reacts with the ozone. Thus, the reference meets the step of reacting bran with ozone.

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Stanley does not disclose the amount. In absence of showing of criticality or unexpected result, it would have been obvious to one skilled in the art to determine the amount of ozone to be used following the teaching of Phillips et al which shows amount in the range which cause bleaching to occur. Applicant has not shown any unexpected result with the claimed amount; it is only a conventional amount used in known reaction as shown by Phillips et al. The properties of reducing ferulic acid and increasing vanillin are an obvious result of the reaction of bran with ozone. Thus, such properties will also be found in the Stanley product. While Stanley discloses the preferred bran is corn bran, other material including vegetable, cereal and fruit sources can be used as the starting material. Therefore, it would have been obvious to one skilled in the art to use other type of bran when desiring to bleach such bran product. Stanley discloses bran of varying particle sizes; it would have been an obvious matter of choice to pick any size. The bran product disclosed by Stanley is a dietary fiber material having improved color stability. It would have been obvious to one skilled in the art to add the bran product to any food product including dry mix, cereal, grain product, baked goods etc...when one desires to increase the fiber content of that product. Stanley discloses adding the bran to dough for bread, crackers, cookies and biscuits. If the bran can be added to the dough, it can be added to the flour which is used to make the dough. The use of whole wheat flour or regular wheat flour would have been an obvious matter of choice. It would also have been obvious to add the bran to grain product and cereal product because these food products are typical made to have a high fiber content. The addition of the bran will serve such purpose. The making of cereal pieces is well known

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in the art; thus, the steps of making the cereal pieces would have been readily apparent to one skilled in the art. It would also have been obvious to use grain product to prepare baked good because they are commonly prepared from grain product. The properties claimed are obviously found in the Stanley product because the bran is treated with ozone just as claimed. Applicant has not shown any unexpected result or criticality with the amount claimed. When the bran is added to whole wheat flour, it is obvious the pH will be the same as claimed because the same flour is used.

Claims 1-3,5-21,23-26,33-34,35-39,41,48 are rejected under 35 U.S.C. 102(e) as being anticipated by Gonzalez et al (Wo 02/21936A2)

Wo 02/21936 discloses a bleached bran and methods of preparation. The starting material for the bleaching can be any type of wheat such as white wheat or red wheat. The bran can be any suitable particle size such as 100 microns or more. The process comprises the steps of treating the bran with about .02-.1% chelating agent for about 1-15 minutes at a temperature of about 70-90 degree c, washing and rinsing the bran, filtering the bran, blanching the bran for 3-10 minutes at 75-85 degree C, washing and rinsing the blanched bran and reacting the bran with oxidant substances such as hydrogen peroxide, ozone. The moisture content of the bleached bran is 4-12%. The whiteness of the bleached bran is further improved by treating the bran with .1-2% ozone at pH 4-5. The anti-oxidant activity is increased up to 30-35% and the ferulic acid is reduced. The bleached bran can be recombined with flours. The bran can be put into dry mixes, ready-to-eat cereals, refrigerated uncooked or bakeable dough, cooked

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cereal dough. The chelating agents used are selected from the ones listed on page 7 lines 25-29. (see pages 6-10,12-13,16,18)

The reference discloses the limitations of the above cited claimed. The claimed language does not exclude the additional steps disclosed in the patent. The reference teaches the ozone is used in amount of .1-2% at acidic pH of 4-5. The properties of the reduced ferulic acid and increased vanillin are inherent in the product disclosed in the patent. Since the treatment with ozone is not done under reduced or increased pressure, it is inherent the process takes place at atmospheric pressure.

In the response filed 7/5/07, applicant argues there is simply no motivation to one skilled to look to the ozone ranges for bleaching paper pulp in Phillips to determine an effective ozone range for decreasing the color of the dietary fiber of Stanley or increasing the native concentration of vanillin in bran as claimed. This argument is not persuasive. Even without the Phillips reference, the amount of ozone used is an optimizing parameter that is within the determination of one skilled in the art. One skilled in the art would use an amount that is effective to carry out the desired bleaching. The Phillips reference further shows that the amount claimed is an amount that is conventional used in bleaching and there is nothing unconventional in the amount recited in the claim. While Phillips is directed to bleaching paper, the function of the ozone is the same as in the Stanley process. Thus, one skilled in the art would look to the guidance of Phillips in determining the amount. As to the increasing of the native vanillin, this is an inherent result of the bleaching process and such result is also expected in the prior art process. A discovery of an inherent result is not the basis of

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patentability. Applicant argues there can be no proper expectation of success.

Applicant does not present evidence or reasoning for why there is no proper expectation of success. Both the Stanley and Phillips processes are directed to bleaching; regardless of the different substrates, the ozone is used to carry out the same function. Furthermore, the substrate in Stanley is fiber material; paper is also a fibrous material. Applicant further argues there is suggestion or teaching of utilizing a mild ozone oxidation treatment to reduce ferulic acid and increase vanillin in bran. This argument is not persuasive because mild ozone treatment in bleaching process is known in the art as shown in Phillips. It is not necessary in a 103 rejection to use an ingredient or amount for the same reason as applicant. It is only necessary to show that using such amount would have been obvious even if it is for a different reason.

Applicant further argues the criticality of the amount of ozone is disclosed in the specification. However, the amount used is a conventional amount for a bleaching process as shown by Phillips. Thus, there is nothing unexpected in the amount claimed. The reduction of ferulic acid and increase of vanillin are an inherent result of the bleaching process.

With respect to the 102 rejection over the Gonzalez et al reference, the 132 declaration to show that the reference is not an invention by another is not sufficient to overcome the rejection. The declaration does not state that the inventors listed in the WO 02/21936 were not the inventors of the patent; the declaration also does not state how the other inventors contributed to the invention since they were listed on the patent.

If the inventors listed on the patent did not invent the subject matter, then what did they do?

The 103 rejection of claims 22, 27-32, 40 and 42-47 over WO 02/21936A2 reference is hereby withdrawn because the reference is commonly assigned with the instant applicant as stated by applicant in the response.

Applicant's arguments filed 7/5/07 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hendricks Keith can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 15, 2007


LIEN TRAN
PRIMARY EXAMINER
